

STATE OF MAINE  
KENNEBEC, SS,

STATE BOARD OF PROPERTY TAX REVIEW  
DOCKET NO: 96-047

KPMG Peat Marwick  
o/b/o Liberty Mutual Insurance Co., )  
Petitioner )  
)  
)  
v. )  
)  
)  
City of Lewiston, )  
Respondent )

DECISION

This matter came before the State Board of Property Tax Review (hereinafter, the "Board") on the appeal by KPMG Peat Marwick on behalf of Liberty Mutual Insurance Company ("Petitioner") from the denial by the City of Lewiston (the "City") of the Petitioner's property tax abatement application for the 1995 tax year. The property which is the subject of this appeal is located at 1775 Lisbon Street. Since Lewiston is a primary assessing area, appeals from denials by the Assessor are brought directly to this Board. See 36 M.R.S.A. § 843 (2) (1990).

Hearing was held on June 18, 1997 before Board members Glenn Hanna, Robert Littlefield, Malachi Anderson, and Lynwood Hand, Chair. James Doherty, Senior Manager, Property Tax Services, KPMG Peat Marwick, represented Petitioner; Roberts Hark, Esq. represented the City.

The subject property is a thirty-seven year old building with approximately 118,758 square feet of building area situated on approximately 90 acres of land. See "Complete Appraisal in a Summary Format," as of April 1, 1995, prepared by Cushman & Wakefield of Massachusetts, Inc. (the "Appraisal"), 22-26. Petitioner is seeking abatement from a current assessed value of \$6,313,750 to a proposed value of \$3,200,000.

The Board first considered the question of the timeliness of this Petition. Pursuant to 36 M.R.S.A. § 841, an application for abatement must be filed with the assessors within 185 days of the date of commitment of taxes. There is no dispute that the relevant commitment date was July 19, 1995 and that the last day on which an application could have been filed timely was January 19, 1997. Nor is there any dispute that the Petitioner's application for abatement was received by the City on January 22, 1996. Based upon the representations of Mr. Doherty, the Board finds that the

application was mailed on January 19, 1998 and was therefore timely filed. By unanimous vote, the Board accepts jurisdiction in this case.

Turning to the valuation issue, the Petitioner's appraiser, Thomas Mullin of Cushman and Wakefield, testified concerning the methodology employed in his appraisal of the subject property. Of the three standard approaches to valuation, Mr. Mullin used only the sales approach. Mr. Mullin rejected the cost approach as being too subjective.

The cost approach required an awful lot of subjectivity given that the original building was built in 1961 for a different use, so for me to estimate the depreciation on a building that old that had been rehabbed for another use was difficult and problematic really too in arriving at a reasonable value estimate. Also there's a lack of large land sales in that area from which to get the land value .... In addition .... there had been quite a bit of economic obsolescence and that's also fairly difficult to arrive at an exact estimate of given the lack of investment market.

See Transcript 26-27. Mr. Mullin ruled out the income approach because he could not find any kind of significant investor market for buildings such as the subject." Id. 27.

In developing his sales comparison approach to value, Mr. Mullin was able to discover only two small office building sales in Lewiston/Auburn and therefore determined to consider a larger market area. Mr. Mullin's table of Comparable Building Sales contains, besides the above mentioned two small Lewiston buildings above and the subject property, two buildings in Augusta and four buildings in New Hampshire. Placing the greatest weight on one comparable (#6 in Merrimack, New Hampshire), Mr. Mullin arrived at a per square foot value for the subject property of \$30 for the main floor and "about half that for the basement space. Id. 28-33. The result of Mr. Mullin's appraisal, using the sales comparison method, was an estimate of value for the subject property of \$3,200,000.

The Petitioner challenges the City's assessment alleging that the assessed value for the 1995 tax year is based upon a revaluation done in 1988 and that, in fact, the City has not updated its assessment on the subject property since that date. In addition, the Petitioner challenges the City's cost approach to value arguing that the City did not make adequate adjustments for physical depreciation, functional obsolescence, building type, and land to building ratio. Id. 215-216.

The Assessor testified to having used all three commonly accepted methods of determining value. For the income approach, the Assessor developed a per square foot rental figure of \$7.50 based upon rental information available in the market. A vacancy factor of 10% and a 15% reduction for management reserves were applied resulting in a net operating income of \$681,374. Using a capitalization rate of 11.2 and adding

\$400,000 for the value of the land; the Assessor arrived at a value, via the income approach, of \$6,485,000 Id. 163-187.

The Assessor also completed a sales comparison approach using comparable sales from Lewiston/Auburn, South Portland and Augusta. After adjustments for differences between the subject property and the comparable, the Appraiser arrived at a per square foot value for the subject property of \$55. Adding the value of the land, this yielded a value for the subject property, using the sales comparison method, of \$6,535,000. See Id. 168-178.

A cost analysis using the Marshall & Swift method resulted in a value, via the cost approach, of \$6,537,000. Correlating the three approaches, and giving equal consideration to each, the Assessor arrived at a value for the subject property of \$6,313,750.

In these proceedings, the Assessor is presumed correct and the Petitioner must prove the Assessor manifestly wrong. See Shawmut Inn v. Inhabitants of Kennebunkport, 428 A. 2d 384 (Me. 1981). However, the Petitioner's burden does not end there for he must not only successfully impeach the Assessor's determination of value but must also provide affirmative, credible evidence of the property's value in order to meet his burden to prove the assessor manifestly wrong.


The judgment that a property's assessed value is in excess of just value requires a comparison between the local assessment and the version of value that the petitioner for abatement contends is the just one. If the petitioner for abatement fails to provide the Board with evidence of just value that the Board deems credible, the Board has no basis in the petitioner's case for comparing the local assessment and the petitioner version of just value.

City of Waterville. et al. v. Waterville Homes. Inc., 655 A. 2d 365 (Me. 1995). The Board notes that the Petitioner's appraiser used the sales comparison approach only and that his market analysis was based mainly on one comparable. The Board is not convinced that such analysis, in and of itself, substantiates a credible market value of the subject property. For this reason, the Board does not find Petitioner's value for the subject property to be credible. The Board finds therefore that Petitioner has failed to meet his burden of proving the Assessor manifestly wrong and, by unanimous vote this petition is hereby denied.

Any party wishing to appeal this Decision must file a Petition for Review in the Superior Court within (30) days of the date of receipt of this Decision, pursuant to 5

M.R.S.A. §§ 11001-11008 (1990). If this Decision is not appealed, it shall become binding on the parties at the end of said 30-day period.

DATED: Dec 22 1977

A handwritten signature in cursive script, appearing to read "Lynwood Hand", written over a horizontal line.

Lynwood Hand, Chari Panel C,  
State Board of Property Tax Review